



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

P.O. Box 3000, Harrisonburg, Virginia 22801

(540) 574-7800 FAX (804) 698-4178

Located at 4411 Early Road, Harrisonburg, Virginia

www.deq.virginia.gov

Andrew R. Wheeler
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

Amy Thatcher Owens
Regional Director

**STATE WATER CONTROL BOARD
AND THE
VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
C&T Durham Trucking Company
FOR
Cherry Grove Dairy Farm
Unpermitted Discharge
AND
C&T Durham Trucking Company Harrisonburg Facility
VPDES Permit Registration No. VAR052507**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15 and 10.1-1455 between the State Water Control Board, the Virginia Waste Management Board and C&T Durham Trucking Company, regarding the Cherry Grove Dairy Farm unpermitted discharge and C&T Durham Trucking Company Harrisonburg Facility, for the purpose of resolving certain violations of the State Water Control Law, Virginia Waste Management Act, and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board(s)" means the State Water Control Board and/or Virginia Waste Management Board, permanent citizens' boards of the Commonwealth of Virginia, as described in Va. Code.
3. "C&T Durham" means C&T Durham Trucking Company, a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. C&T Durham is a "person" within the meaning of Va. Code § 62.1-44.3.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "Facility" or "C&T Durham Facility" means the C&T Durham Trucking Company Harrisonburg Facility located at 411 Pleasant Valley Road, Harrisonburg, Virginia, from which discharges of stormwater associated with industrial activity occur.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Permit" means VPDES General Permit for Stormwater Discharges Associated with Industrial Activity, which was issued under the State Water Control Law and the Regulation on July 1, 2019 and which expires on June 30, 2024. C&T Durham applied for coverage under the Permit and was issued coverage with Registration No. VAR052507 on February 19, 2021.
12. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
13. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
14. "Registration statement" means a registration statement for coverage under the VPDES General Permit for Stormwater Discharges Associated with Industrial Activity.
15. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
16. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.
22. "VPDES" means Virginia Pollutant Discharge Elimination System.
23. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. C&T Durham owns and operates a trucking company with associated truck tanker parking at the C&T Durham Facility, which discharges stormwater associated with industrial activity to Blacks Run.
2. Cherry Grove Dairy Farm is a dairy farm located at 5239 North Lee Highway in Rockbridge County, Virginia. C&T Durham provides contract milk hauling services to Cherry Grove Dairy Farm.
3. Blacks Run is located in the Potomac River Basin and Shenandoah River Subbasin. Blacks Run is listed in DEQ's 305(b) report as impaired for E. coli, Fecal Coliform, and Aquatic Life Use. Blacks Run is included in the Fecal Coliform TMDL for Blacks Run, Rockingham County, Virginia, approved by EPA on May 31, 2002. Additionally, Blacks Run is included in the TMDL for Blacks Run and Cooks Creek Aquatic Life Use (Benthic) Impairment, which was approved by EPA on June 5, 2002 and revised on June 27, 2019.
4. Whiteside Run is located in the James River (Upper) Basin. Whiteside Run is listed in DEQ's 305(b) report as fully supporting all uses for which it was monitored. Whiteside Run is included in the Bacteria TMDL Development for Colliers Creek, North Fork Buffalo Creek, South Fork Buffalo Creek, Buffalo Creek, Maury River, and Cedar Creek, approved on June 26, 2014.
5. On May 4, 2019, DEQ received a citizen complaint that Whiteside Run had a noticeable white color, below Cherry Grove Dairy Farm. Rockbridge County Fire Chief Ramsey responded to the complaint and observed milk in the stream for approximately 1.4 miles downstream of Cherry Grove Dairy Farm. No aquatic life impacts were reported by the Fire Chief.
6. On May 6, 2019, DEQ staff conducted an inspection of Whiteside Run below Cherry Grove Dairy Farm. DEQ staff observed the stream running clear from the Cherry Grove

Dairy Farm to Borden Grant Trail crossing, approximately 1.4 miles downstream. DEQ staff spoke with the owner of Cherry Grove Dairy Farm who indicated that a milk tanker truck, owned by C&T Durham, was filled from the bulk tank on May 4, 2019. The entirety of the bulk tank would not fit in the tanker, and the driver opened the bottom floor valve on the bulk tank to dump the remaining milk in the bulk tank to the floor of the tank room. The discharged milk overwhelmed the drainage system in the bulk tank room, which leads to the manure pit, and the discharge continued to Whiteside Run. Approximately 1,900 pounds (approximately 220 gallons) of milk was discharged from the bulk tank to Whiteside Run. The events as described by the owner of Cherry Grove Dairy Farm were corroborated by a Dairy Farmers of America field representative.

7. On May 6, 2019, DEQ staff communicated with C&T Durham and confirmed the events indicated in Section C(6).
8. Va. Code § 62.1-44.5 states that: "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses..."
9. 9 VAC 25-31-50.A. states that: "Except in compliance with a VPDES permit, or another permit, issued by the board or other entity authorized by the board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses..."
10. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
11. On May 9, 2019, DEQ issued Notice of Violation (NOV) No. 2019-VRO-0011 to C&T Durham for the unpermitted discharge to Whiteside Run described above.
12. On September 27, 2019, DEQ staff conducted an inspection at the C&T Durham Facility in response to a complaint received. DEQ staff observed the following during the inspection:
 - a. Industrial activity associated with trucking operations at the C&T Durham Facility. DEQ staff observed stormwater outfalls at the C&T Durham Facility, and DEQ did not have record of an application for a VPDES individual permit or submittal of a registration statement by C&T Durham for coverage under the VPDES General Permit for Stormwater Discharges Associated with Industrial Activity, issued on July 1, 2019 with an expiration date of June 30, 2024.

- b. Brewing waste on the ground at the C&T Durham Facility and two tankers with milk that leaked to the ground.
13. 9 VAC 25-31-120(B) states in part that: "Dischargers of storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit..."
14. Va. Code § 10.1-1418.1(A) states that: "It shall be the duty of all persons to dispose of their solid waste in a legal manner."
15. 9 VAC 20-81-40(B-D) states that: "No person shall allow waste to be disposed of or otherwise managed on his property except in accordance with this chapter. It shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner. Any person who violates subsection A, B, or C of this section shall immediately cease the activity of improper management and treatment, storage, or disposal of any additional wastes and shall initiate such removal, cleanup, or closure in place."
16. On November 1, 2019, DEQ issued NOV No. 2019-VRO-0025 to C&T Durham for failure to apply for permit coverage for discharges of industrial stormwater and failure to properly dispose of solid waste at the C&T Durham Facility.
17. On November 13, 2019, C&T Durham submitted a registration statement for coverage under the Permit for the C&T Durham Facility.
18. On December 11, 2019, DEQ staff met with C&T Durham representatives to discuss the NOVs. DEQ staff provided comments on the registration statement submitted by C&T Durham at the meeting. C&T Durham also indicated that they cleaned up the waste observed during the September 27, 2019 inspection and would provide documentation to DEQ.
19. On December 26, 2019, C&T Durham provided photo documentation that the waste was removed at the C&T Durham Facility in October 2019.
20. On March 6, 2020, C&T Durham notified DEQ that they hired Cardino, a consultant engineer, to assist with the registration statement for coverage under the Permit at the C&T Durham Facility.
21. On February 19, 2021, DEQ issued coverage to C&T Durham under the Permit for the C&T Durham Facility, assigning it registration number VAR052507.
22. On March 3, 2021, C&T Durham provided documentation of control measures used at the C&T Durham Facility to prevent leakage from tankers, catch leaked material from tankers, and clean up material that has leaked from tankers.

23. On March 4, 2021, DEQ staff reviewed the documentation provided by C&T Durham and verified that the violations as described in paragraphs C(11) through C(21), above, have been corrected.
24. The Department has issued no permits or certificates to C&T Durham other than VPDES Permit Registration No. VAR052507.
25. Blacks Run and Whiteside Run are surface waters located wholly within the Commonwealth and are "state waters" under State Water Control Law.
26. Based on the results of the May 6, 2019 and September 27, 2019 inspections, the May 6, 2019 communication, the documentation submitted on November 13, 2019, December 26, 2019, and March 3, 2021, and the December 11, 2019 meeting, the Board(s) conclude that C&T Durham has violated Va. Code 62.1-44.5, 9 VAC 25-31-50(A), 9 VAC 25-31-120(B), Va. Code 10.1-1418.1(A), and 9 VAC 20-81-40(B-D) as described in paragraph C(5) through C(23), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 and 10.1-1455, the Board(s) order C&T Durham, and C&T Durham agrees to:

1. Pay a civil charge of \$8,225 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

C&T Durham shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, C&T Durham shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of C&T Durham for good cause shown by C&T Durham, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV Nos. 2019-VRO-0011 and 2019-VRO-0025 dated May 9, 2019 and November 1, 2019, respectively. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, C&T Durham admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. C&T Durham consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. C&T Durham declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by C&T Durham to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. C&T Durham shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. C&T Durham shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. C&T Durham shall notify the DEQ Regional Director

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verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and C&T Durham. Nevertheless, C&T Durham agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. the Director or his designee terminates the Order after C&T Durham has completed all of the requirements of the Order;
 - b. C&T Durham petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to C&T Durham.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve C&T Durham from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by C&T Durham and approved by the Department pursuant to this Order are incorporated into this

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Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of C&T Durham certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind C&T Durham to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of C&T Durham.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, C&T Durham voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2022.

Amy T. Owens, Regional Director
Department of Environmental Quality

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C&T Durham Trucking Company voluntarily agrees to the issuance of this Order.

Date: 2-23-22 By: [Signature], President
(Person) (Title)
C&T Durham Trucking Company

State of NC
~~Commonwealth of Virginia~~
City/County of Guilford

The foregoing document was signed and acknowledged before me this 23 day of
February, 2022, by Todd Durham who is
President of C&T Durham Trucking Company, on behalf of the
corporation.

[Signature]
Notary Public

Registration No.

My commission expires: 10/19/22

Notary seal: